

By the Committee on Ways and Means; and Senator Ostalkiewicz

301-2069A-98

1 A bill to be entitled
2 An act relating to taxation (RAB); amending s.
3 212.08, F.S., relating to the tax on sales,
4 use, and other transactions; revising the sales
5 tax exemption provided for food and drinks;
6 providing definitions; exempting additional
7 medical supplies and equipment; defining the
8 term "prescriptions"; revising the exemption
9 for school books and school lunches; providing
10 exemptions with respect to parent-teacher
11 organizations and associations, to schools with
12 grades K through 12, to mobile home lot
13 improvements, and to sales of certain personal
14 property supported through the Veterans
15 Administration; providing a partial exemption
16 for certain commercial fishing vessels;
17 providing guidelines for determining
18 applicability of sales surtaxes to certain
19 transactions; providing an exemption for
20 certain foods, drinks, and other items provided
21 to customers on a complimentary basis by a
22 dealer who sells food products at retail;
23 providing an exemption for foods and beverages
24 donated by such dealers to certain
25 organizations; revising provisions relating to
26 the technical assistance advisory committee
27 established to provide advice in determining
28 the taxability of specific products; providing
29 membership requirements; amending s. 213.22,
30 F.S.; providing for the issuance of technical
31

1 assistance advisements; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsections (1), (2), and (14), paragraph
7 (q) of subsection (7), and paragraph (a) of subsection (8) of
8 section 212.08, Florida Statutes, are amended, and paragraphs
9 (qq), (rr), (ss), (tt), and (uu) are added to subsection (7)
10 of that section, to read:

11 212.08 Sales, rental, use, consumption, distribution,
12 and storage tax; specified exemptions.--The sale at retail,
13 the rental, the use, the consumption, the distribution, and
14 the storage to be used or consumed in this state of the
15 following are hereby specifically exempt from the tax imposed
16 by this chapter.

17 (1) EXEMPTIONS; GENERAL GROCERIES.--

18 (a) Food products for human consumption are exempt
19 from the tax imposed by this chapter.

20 (b) As used in this subsection, the term "food
21 products" means edible commodities, whether processed, cooked,
22 raw, canned, or in any other form, which are generally
23 regarded as food. This includes, but is not limited to:

24 1. Cereals and cereal products, baked goods,
25 oleomargarine, meat and meat products, fish and seafood
26 products, frozen foods and dinners, poultry, eggs and egg
27 products, vegetables and vegetable products, fruit and fruit
28 products, spices, salt, sugar and sugar products, milk and
29 dairy products, and products intended to be mixed with milk.

30 2. Natural fruit or vegetable juices or their
31 concentrates or reconstituted natural concentrated fruit or

1 vegetable juices, whether frozen or unfrozen, dehydrated,
2 powdered, granulated, sweetened or unsweetened, seasoned with
3 salt or spice, or unseasoned; coffee, coffee substitutes, or
4 cocoa; and tea, unless it is sold in a liquid form.

5 3. Bakery products sold by bakeries, pastry shops, or
6 like establishments that do not have eating facilities.

7 (c) The exemption provided by this subsection does not
8 apply:

9 1. When the food products are sold as meals for
10 consumption on or off the premises of the dealer.

11 2. When the food products are furnished, prepared, or
12 served for consumption at tables, chairs, or counters or from
13 trays, glasses, dishes, or other tableware, whether provided
14 by the dealer or by a person with whom the dealer contracts to
15 furnish, prepare, or serve food products to others.

16 3. When the food products are ordinarily sold for
17 immediate consumption on the premises or near a location at
18 which parking facilities are provided primarily for the use of
19 patrons in consuming the products purchased at the location,
20 even though such products are sold on a "take out" or "to go"
21 order and are actually packaged or wrapped and taken from the
22 premises of the dealer.

23 4. To sandwiches sold ready for immediate consumption
24 on or off the premises.

25 5. When the food products are sold ready for immediate
26 consumption within a place, the entrance to which is subject
27 to an admission charge.

28 6. When the food products are sold as hot prepared
29 food products.

30 7. To soft drinks, which include, but are not limited
31 to, any nonalcoholic beverage, any preparation or beverage

1 commonly referred to as a "soft drink," or any noncarbonated
2 drink made from milk derivatives or tea, when sold in cans or
3 similar containers.

4 8. To ice cream, frozen yogurt, and similar frozen
5 dairy or nondairy products in cones, small cups, or pints,
6 popsicles, frozen fruit bars, or other novelty items, whether
7 or not sold separately.

8 9. To food prepared, whether on or off the premises,
9 and sold for immediate consumption. This does not apply to
10 food prepared off the premises and sold in the original sealed
11 container, or the slicing of products into smaller portions.

12 10. When the food products are sold through a vending
13 machine, pushcart, motor vehicle, or any other form of
14 vehicle.

15 11. To candy and any similar product regarded as candy
16 or confection, based on its normal use, as indicated on the
17 label or advertising thereof.

18 12. To bakery products sold by bakeries, pastry shops,
19 or like establishments that have eating facilities, except
20 when sold for consumption off the premises.

21 13. When food products are served, prepared, or sold
22 in or by restaurants, lunch counters, cafeterias, hotels,
23 taverns, or other like places of business.

24 (d) As used in this subsection, the term:

25 1. "For consumption off the premises" means that the
26 food or drink is intended by the customer to be consumed at a
27 place away from the dealer's premises.

28 2. "For consumption on the premises" means that the
29 food or drink sold may be immediately consumed on the premises
30 where the dealer conducts his or her business. In determining
31 whether an item of food is sold for immediate consumption,

1 there shall be considered the customary consumption practices
2 prevailing at the selling facility.

3 3. "Premises" shall be construed broadly, and means,
4 but is not limited to, the lobby, aisle, or auditorium of a
5 theater; the seating, aisle, or parking area of an arena,
6 rink, or stadium; or the parking area of a drive-in or outdoor
7 theater. The premises of a caterer with respect to catered
8 meals or beverages shall be the place where such meals or
9 beverages are served.

10 4. "Hot prepared food products" means those products,
11 items, or components which have been prepared for sale in a
12 heated condition and which are sold at any temperature that is
13 higher than the air temperature of the room or place where
14 they are sold. "Hot prepared food products," for the purposes
15 of this subsection, includes a combination of hot and cold
16 food items or components where a single price has been
17 established for the combination and the food products are sold
18 in such combination, such as a hot meal, a hot specialty dish
19 or serving, or a hot sandwich or hot pizza, including cold
20 components or side items.

21 ~~(a) There are exempt from the tax imposed by this~~
22 ~~chapter food and drinks for human consumption except candy.~~
23 ~~Unless the exemption provided by paragraph (7)(q) for school~~
24 ~~lunches, paragraph (7)(i) for meals to certain patients or~~
25 ~~inmates, paragraph (7)(k) for meals provided by certain~~
26 ~~nonprofit organizations, or paragraph (7)(z) for food or~~
27 ~~drinks sold through vending machines pertains, none of such~~
28 ~~items of food or drinks means:~~

29 ~~1. Food or drinks served, prepared, or sold in or by~~
30 ~~restaurants; drugstores; lunch counters; cafeterias; hotels;~~
31 ~~amusement parks; racetracks; taverns; concession stands at~~

1 ~~arenas, auditoriums, carnivals, fairs, stadiums, theaters, or~~
2 ~~other like places of business; or by any business or place~~
3 ~~required by law to be licensed by the Division of Hotels and~~
4 ~~Restaurants of the Department of Business and Professional~~
5 ~~Regulation, except bakery products sold in or by pastry shops,~~
6 ~~doughnut shops, or like establishments for consumption off the~~
7 ~~premises;~~

8 ~~2. Foods and drinks sold ready for immediate~~
9 ~~consumption from vending machines, pushcarts, motor vehicles,~~
10 ~~or any other form of vehicle;~~

11 ~~3. Soft drinks, which include, but are not limited to,~~
12 ~~any nonalcoholic beverage, any preparation or beverage~~
13 ~~commonly referred to as a "soft drink," or any noncarbonated~~
14 ~~drink made from milk derivatives or tea, when sold in cans or~~
15 ~~similar containers. The term "soft drink" does not include:~~
16 ~~natural fruit or vegetable juices or their concentrates or~~
17 ~~reconstituted natural concentrated fruit or vegetable juices,~~
18 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
19 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
20 ~~unseasoned; coffee or coffee substitutes; tea except when sold~~
21 ~~in containers as provided herein; cocoa; products intended to~~
22 ~~be mixed with milk; or natural fluid milk;~~

23 ~~4. Foods or drinks cooked or prepared on the seller's~~
24 ~~premises and sold ready for immediate consumption either on or~~
25 ~~off the premises, excluding bakery products for off-premises~~
26 ~~consumption unless such foods are taxed under subparagraph 1.~~
27 ~~or subparagraph 2. ; or~~

28 ~~5. Sandwiches sold ready for immediate consumption.~~

29
30 ~~For the purposes of this paragraph, "seller's premises" shall~~
31 ~~be construed broadly, and means, but is not limited to, the~~

1 ~~lobby, aisle, or auditorium of a theater; the seating, aisle,~~
2 ~~or parking area of an arena, rink, or stadium; or the parking~~
3 ~~area of a drive-in or outdoor theater. The premises of a~~
4 ~~caterer with respect to catered meals or beverages shall be~~
5 ~~the place where such meals or beverages are served.~~

6 (e)~~(b)~~1. Food or drinks not exempt under paragraphs
7 (a), (b), (c), and (d)~~paragraph (a)~~ shall be exempt,
8 notwithstanding those paragraphs ~~that paragraph~~, when
9 purchased with food coupons or Special Supplemental Food
10 Program for Women, Infants, and Children vouchers issued under
11 authority of federal law.

12 2. This paragraph is effective only while federal law
13 prohibits a state's participation in the federal food coupon
14 program or Special Supplemental Food Program for Women,
15 Infants, and Children if there is an official determination
16 that state or local sales taxes are collected within that
17 state on purchases of food or drinks with such coupons.

18 3. This paragraph shall not apply to any food or
19 drinks on which federal law shall permit sales taxes without
20 penalty, such as termination of the state's participation.

21 ~~4. Notwithstanding any other provision of law, the~~
22 ~~department shall make refunds or allow credits to a~~
23 ~~distributor equal to the fee imposed and paid under s.~~
24 ~~403.7197 on containers purchased by consumers with food~~
25 ~~coupons or Special Supplemental Food Program for Women,~~
26 ~~Infants, and Children vouchers issued under authority of~~
27 ~~federal law.~~

28 (2) EXEMPTIONS; MEDICAL.--

29 (a) There shall be exempt from the tax imposed by this
30 chapter any medical products and supplies ~~product, supply, or~~
31 ~~medicine dispensed in a retail establishment by a pharmacist~~

1 ~~licensed by the state~~, according to an individual prescription
2 or prescriptions written by a prescriber authorized by law to
3 prescribe medicinal drugs; hypodermic needles; hypodermic
4 syringes; chemical compounds and test kits used for the
5 diagnosis or treatment of human disease, illness, or injury;
6 and common household remedies recommended and generally sold
7 for internal or external use in the cure, mitigation,
8 treatment, or prevention of illness or disease in human
9 beings, but not including cosmetics or toilet articles,
10 notwithstanding the presence of medicinal ingredients therein,
11 according to a list prescribed and approved by the Department
12 of Health ~~and Rehabilitative Services~~, which list shall be
13 certified to the Department of Revenue from time to time and
14 included in the rules promulgated by the Department of
15 Revenue. There shall also be exempt from the tax imposed by
16 this chapter artificial eyes and limbs; orthopedic shoes;
17 prescription eyeglasses and items incidental thereto or which
18 become a part thereof; dentures; hearing aids; crutches;
19 prosthetic and orthopedic appliances; and funerals. In
20 addition, any items intended for one-time use which transfer
21 essential optical characteristics to contact lenses shall be
22 exempt from the tax imposed by this chapter; however, this
23 exemption shall apply only after \$100,000 of the tax imposed
24 by this chapter on such items has been paid in any calendar
25 year by a taxpayer who claims the exemption in such year.
26 Funeral directors shall pay tax on all tangible personal
27 property used by them in their business.

28 (b) For the purposes of this subsection:

29 1. "Prosthetic and orthopedic appliances" means any
30 apparatus, instrument, device, or equipment used to replace or
31 substitute for any missing part of the body, to alleviate the

1 malfunction of any part of the body, or to assist any disabled
2 person in leading a normal life by facilitating such person's
3 mobility. Such apparatus, instrument, device, or equipment
4 shall be exempted according to an individual prescription or
5 prescriptions written by a physician licensed under chapter
6 458, chapter 459, chapter 460, chapter 461, or chapter 466, or
7 according to a list prescribed and approved by the Department
8 of Health ~~and Rehabilitative Services~~, which list shall be
9 certified to the Department of Revenue from time to time and
10 included in the rules promulgated by the Department of
11 Revenue.

12 2. "Cosmetics" means articles intended to be rubbed,
13 poured, sprinkled, or sprayed on, introduced into, or
14 otherwise applied to the human body for cleansing,
15 beautifying, promoting attractiveness, or altering the
16 appearance and also means articles intended for use as a
17 compound of any such articles, including, but not limited to,
18 cold creams, suntan lotions, makeup, and body lotions.

19 3. "Toilet articles" means any article advertised or
20 held out for sale for grooming purposes and those articles
21 that are customarily used for grooming purposes, regardless of
22 the name by which they may be known, including, but not
23 limited to, soap, toothpaste, hair spray, shaving products,
24 colognes, perfumes, shampoo, deodorant, and mouthwash.

25 4. "Prescription" includes any order for drugs or
26 medicinal supplies written or transmitted by any means of
27 communication by a duly licensed practitioner authorized by
28 the laws of the state to prescribe such drugs or medicinal
29 supplies and intended to be dispensed by a pharmacist. The
30 term also includes an orally transmitted order by the lawfully
31 designated agent of such practitioner. The term also includes

1 an order written or transmitted by a practitioner licensed to
2 practice in a jurisdiction other than this state, but only if
3 the pharmacist called upon to dispense such order determines,
4 in the exercise of his or her professional judgment, that the
5 order is valid and necessary for the treatment of a chronic or
6 recurrent illness. The term also includes a pharmacist's order
7 for a product selected from the formulary created pursuant to
8 s. 465.186. A prescription may be retained in written form, or
9 the pharmacist may cause it to be recorded in a
10 data-processing system, provided that such order can be
11 produced in printed form upon lawful request.

12 (c) Chlorine shall not be exempt from the tax imposed
13 by this chapter when used for the treatment of water in
14 swimming pools.

15 (d) Lithotripters are exempt.

16 (e) Human organs are exempt.

17 (f) Sales of drugs to or by physicians, dentists,
18 veterinarians, and hospitals in connection with medical
19 treatment are exempt.

20 (g) Medical products and supplies used in the cure,
21 mitigation, alleviation, prevention, or treatment of injury,
22 disease, or incapacity which are temporarily or permanently
23 incorporated into a patient or client by a practitioner of the
24 healing arts licensed in the state are exempt.

25 (h) The purchase by a veterinarian of commonly
26 recognized substances possessing curative or remedial
27 properties which are ordered and dispensed as treatment for a
28 diagnosed health disorder by or on the prescription of a duly
29 licensed veterinarian, and which are applied to or consumed by
30 animals for alleviation of pain or the cure or prevention of
31 sickness, disease, or suffering are exempt. Also exempt are

1 the purchase by a veterinarian of antiseptics, absorbent
2 cotton, gauze for bandages, lotions, vitamins, and worm
3 remedies.

4 (i) X-ray opaques, also known as opaque drugs and
5 radiopaque, such as the various opaque dyes and barium
6 sulphate, when used in connection with medical x-rays for
7 treatment of bodies of humans and animals, are exempt.

8 (j) Parts, special attachments, special lettering, and
9 other like items that are added to or attached to tangible
10 personal property so that a handicapped person can use them
11 are exempt when such items are purchased by a person pursuant
12 to an individual prescription.

13 (k)(d) This subsection shall be strictly construed and
14 enforced.

15 (7) MISCELLANEOUS EXEMPTIONS.--

16 (q) School books and school lunches.--This exemption
17 applies to school books used in regularly prescribed courses
18 of study, and to school lunches served ~~to students~~, in public,
19 parochial, or nonprofit schools operated for and attended by
20 pupils of grades K through 12. Yearbooks, magazines,
21 newspapers, directories, bulletins, and similar publications
22 distributed by such educational institutions to their students
23 are also exempt. School books and food sold or served at
24 community colleges and other institutions of higher learning
25 are taxable.

26 (qq) Parent-teacher organizations, parent-teacher
27 associations, and schools having grades K through
28 12.--Parent-teacher organizations and associations qualified
29 as educational institutions under paragraph (o) associated
30 with schools having grades K through 12, and schools having
31 grades K through 12, may pay tax to their suppliers on the

1 cost price of school materials and supplies purchased, rented,
2 or leased for resale or rental to students in grades K through
3 12, of items sold for fund-raising purpose, and of items sold
4 through vending machines located on the school premises, in
5 lieu of collecting the tax imposed by this chapter from the
6 purchaser. This paragraph also applies to food or beverages
7 sold through vending machines located in the student lunchroom
8 or dining room of a school having kindergarten through grade
9 12.

10 (rr) Mobile home lot improvements.--Items purchased by
11 developers for use in making improvements to a mobile home lot
12 owned by the developer may be purchased tax-exempt as a sale
13 for resale if made pursuant to a contract that requires the
14 developer to sell a mobile home to a purchaser, place the
15 mobile home on the lot, and make the improvements to the lot
16 for a single lump-sum price. The developer must collect and
17 remit sales tax on the entire lump-sum price.

18 (ss) Veterans Administration.--When a veteran of the
19 armed forces purchases an aircraft, boat, mobile home, motor
20 vehicle, or other vehicle from a dealer pursuant to the
21 provisions of s. 3902(a), Title 38, United States Code, or any
22 successor provision of the United States Code, the amount that
23 is paid directly to the dealer by the Veterans Administration
24 is not taxable. However, any portion of the purchase price
25 which is paid directly to the dealer by the veteran is
26 taxable.

27 (tt) Complimentary items.--There is exempt from the
28 tax imposed by this chapter:

29 1. Any food or drink, whether or not cooked or
30 prepared on the premises, provided without charge as a sample
31

1 or for the convenience of customers by a dealer that primarily
2 sells food product items at retail.

3 2. Any item given to a customer as part of a price
4 guarantee plan related to point-of-sale errors by a dealer
5 that primarily sells food products at retail.

6
7 The exemptions in this paragraph do not apply to businesses
8 with the primary activity of serving prepared meals or
9 alcoholic beverages for immediate consumption.

10 (uu) Donated foods or beverages.--Any food or beverage
11 donated by a dealer that sells food products at retail to a
12 food bank or an organization that holds a current exemption
13 from federal corporate income tax pursuant to s. 501(c) of the
14 Internal Revenue Code of 1986, as amended, is exempt from the
15 tax imposed by this chapter.

16 (8) PARTIAL EXEMPTIONS; VESSELS ENGAGED IN INTERSTATE
17 OR FOREIGN COMMERCE.--

18 (a) The sale or use of vessels and parts thereof used
19 to transport persons or property in interstate or foreign
20 commerce, including commercial fishing vessels, is subject to
21 the taxes imposed in this chapter only to the extent provided
22 herein. The basis of the tax shall be the ratio of intrastate
23 mileage to interstate or foreign mileage traveled by the
24 carrier's vessels which were used in interstate or foreign
25 commerce and which had at least some Florida mileage during
26 the previous fiscal year. The ratio would be determined at
27 the close of the carrier's fiscal year. This ratio shall be
28 applied each month to the total Florida purchases of such
29 vessels and parts thereof which are used in Florida to
30 establish that portion of the total used and consumed in
31 intrastate movement and subject to the tax at the applicable

1 rate. The basis for imposition of any discretionary surtax
2 shall be as set forth in s. 212.054.Items, appropriate to
3 carry out the purposes for which a vessel is designed or
4 equipped and used, purchased by the owner, operator, or agent
5 of a vessel for use on board such vessel shall be deemed to be
6 parts of the vessel upon which the same are used or consumed.
7 Vessels and parts thereof used to transport persons or
8 property in interstate and foreign commerce are hereby
9 determined to be susceptible to a distinct and separate
10 classification for taxation under the provisions of this
11 chapter. Vessels and parts thereof used exclusively in
12 intrastate commerce do not qualify for the proration of tax.

13 (14) TECHNICAL ASSISTANCE ADVISORY COMMITTEE.--The
14 department shall establish a technical assistance advisory
15 committee with public and private sector members, including
16 representatives of both manufacturers and retailers, to advise
17 the Department of Revenue and the Department of Health ~~and~~
18 ~~Rehabilitative Services~~ in determining the taxability of
19 specific products and product lines pursuant to subsection (1)
20 and paragraph (2)(a). In determining taxability and in
21 preparing a list of specific products and product lines that
22 ~~which~~ are or are not taxable, the committee shall not be
23 subject to the provisions of chapter 120. Private sector
24 members shall not be compensated for serving on the committee.

25 Section 2. Subsection (1) of section 213.22, Florida
26 Statutes, is amended to read:

27 213.22 Technical assistance advisements.--

28 (1) The department may issue informal technical
29 assistance advisements to persons, upon written request, as to
30 the position of the department on the tax consequences of a
31 stated transaction or event, under existing statutes, rules,

1 or policies. After the issuance of an assessment, a technical
2 assistance advisement may not be issued to a taxpayer who
3 requests an advisement relating to the tax or liability for
4 tax in respect to which the assessment has been made, except
5 that a technical assistance advisement may be issued to a
6 taxpayer who requests an advisement relating to the exemptions
7 in s. 212.08(1) or (2) at any time. Technical assistance
8 advisements shall have no precedential value except to the
9 taxpayer who requests the advisement and then only for the
10 specific transaction addressed in the technical assistance
11 advisement, unless specifically stated otherwise in the
12 advisement. Any modification of an advisement shall be
13 prospective only. A technical assistance advisement is not an
14 order issued pursuant to s. 120.565 or s. 120.569 or a rule or
15 policy of general applicability under s. 120.54. The
16 provisions of s. 120.53(1) are not applicable to technical
17 assistance advisements.

18 Section 3. This act shall take effect July 1, 1998.

19

20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 SB 1694

23

24 For purposes of determination of the taxability of new items
25 sold in grocery stores to the provisions of the APA, instead
26 of applying recommendations of a technical assistance advisory
27 council, the committee substitute provides for the Department
28 of Revenue to issue Technical Assistance Advisements at any
29 time to a taxpayer who requests an advisement relating to
30 grocery or medical exemptions.

31